(6) *Yong Cho Yeit* v. *Yap Yor Ching* [1966] 1 M.L.J. xxxiv.

(7) *Pang Mia Huan* v. *Lim Loo Cheong* [1967] 1 M.L.J. lxii.

(8) *Peh Joo Kim* v. *Yee Hong Kee & Ors.* [1964] M.L.J. xlv.

(9) *Hok Fook Hin* v. *Hashim & Anor.* [1968] 2 M.L.J. ii.

CIVIL SUIT.

S. T. Gamany for the plaintiff.

Khoo Eng Chin for the defendants.

Cur. Adv. Vult.

Mohamed Azmi J.: This is a claim for damages arising from a motor accident which took place on March 9, 1964 along Klang Road. The plaintiff was a passenger in a motor car No. BE 2907 driven by her husband when another motor car No. BK 3314 driven by the first defendant came from the opposite direction and collided with it. The second defendant is the owner of BK 3314 and is the employer or principal of the first defendant.

As a result of the accident, the plaintiff suffered various injuries. The defendants have conceded to 100 per cent liability. The parties have also agreed on special damages in the sum of $750. The only issue left before the court in this application is the amount of general damages.

The plaintiff is thirty seven years old. She was hospitalised from March 9, 1964 to May 5, 1964, a period of fifty five days, and thereafter she was treated as an outpatient till July 1, 1965. In assessing general damages in this case, I find it proper and helpful to divide the injuries sustained into four categories.

Under the first category was the comminuted fracture of the upper end of the plaintiff's right tibia and fibula. The fracture was united but with a permanent shortening of half an inch. There is also swelling of the knee due to the deformity of the upper end of the tibia. Her right thigh is wasted. The girth being seventeen inches compared to eighteen inches on the left side measured five inches above the knee cap. The deformity involves the articulate surface which is virtually certain to lead to osteoarthritis later. Counsel for both parties have quoted the cases of *Patimah binte Mat & Ors.* v. *Yong Ah Chak*[1] and *Ng Beng* v. *Suki bin Ahmad.*[2] Counsel for the plaintiff has also cited the case of *Too Kwee* v. *Chew Bah Chik.*[3] Under this category, I would assess general damages at $6,000.

For the fracture of the plaintiff's first and second ribs and tenderness over right upper chest, both counsel made reference to the case of *Mat Derus bin Hamil & Ors.* v. *Sahadevan.*[4] On behalf of the plaintiff, the case of *Chong Kim Kee* v. *Tan Kok Hua*[5] was also cited. In the present case, the fracture and tenderness have completely healed with no apparent disability. I would, therefore, award $1,500 under the second category.

As regards the fracture of the base of her third and fourth metatarsal bones, both counsel cited the case of *Yong Cho Yeit* v. *Yap Yor Ching.*[6] Reference was also made to the case of *Pang Mia Huan* v. *Lim Loo Cheong*[7] and *Peh Joo Kim* v. *Yee Hong Kee & Ors.*[8] Under this category, I award damages at $1,750.

The last category of injuries sustained by the plaintiff consisted of lacerations on her left eyebrow, chin and forehead. The lacerations have healed but have left permanent scars of one inch long over the left eyebrow, one inch long over the right cheek, half an inch long over the left cheek, and multiple scars under the chin including a curved scar three inches long. Counsel for the plaintiff has referred to the case of *Hok Fook Hin* v. *Hashim & Anor.*[9] Having regard to the nature of the scars, I would award damages at $750.

On the above basis, I consider it fair and reasonable to award a sum of $10,000 as general damages. In arriving at this figure, I have taken into consideration all relevant factors, including the age of the plaintiff, the fact that she is a married woman, and that there is no loss of future earnings.

There will, therefore, be judgment for the plaintiff as follows: —

(1) Special damages: $750;

(2) General damages: $10,000; and

(3) Costs of this suit including the costs of this application.

Judgment for the plaintiff.

Solicitors: *Daim & Gamany; Khoo & Sidhu.*

HENG KIM KHOON v. PUBLIC PROSECUTOR

[A.Cr.J. (Sharma J.) October 7, 1971]

[Ipoh — Criminal Appeal No. 51 of 1971]

Criminal Law and Procedure — Plea of guilty — Limited right of appeal — Revisionary powers of judge — Criminal Procedure Code (F.M.S. Cap. 6), ss. 305 & 325(i).

Dangerous Drugs — Possession — Dangerous Drugs Ordinance, 1952, ss. 9(1)(b) & 10(2)(a).

This was an appeal against sentence. The accused having pleaded guilty to the two charges against him under sections 9(1)(b) and 10(2)(a) of the Dangerous Drugs Ordinance, 1952, could not appeal against his conviction because of the provisions of section 305 of the Criminal Procedure Code. The accused asked the court to exercise its revisionary powers under section 325(i) of the Code.

At the trial, the charges were read over to the accused, explained and understood by him. He pleaded guilty thereto. He admitted the facts but in mitigation stated that the exhibits were not his and that they had been left behind by a friend. In spite of what the accused said, the learned president found him guilty and convicted him on the two charges.

Held: (1) proof of "possession" is the very essential ingredient of the offences under the Dangerous Drugs Ordinance, 1952;

(2) a plea of guilty only amounts to an admission that the accused committed the acts alleged against him and not an admission of the guilt under a particular section of the Act. If he pleads guilty under an erroneous view of the law his conviction cannot stand. In such a case the plea of

guilty does not avail because he cannot be said to have committed the offence in question in the eyes of the law;

(3) therefore, the appeal was allowed and the case sent back for retrial before another president.

Per Sharma J.: "...A plea of guilty may be accepted by the court and the accused convicted on it, but the court is not bound to accept a plea of guilty in all cases. The court must carefully consider whether the accused has fully understood the nature of the charge to which he pleads guilty. The accused is not to be taken at his word when he pleads guilty unless the plea is expressed in unmistakeable terms with full appreciation of the essential ingredients of the offence. This rule of law is applied with all the greater stringency when the offence charged is complicated or serious."

Cases referred to:-

(1) *R.* v. *Ingleson* (1914) 11 Cr. App. R. 21.

(2) *R.* v. *Golathan* (1915) 11 Cr. App. R. 79.

MAGISTRATE'S CRIMINAL APPEAL.

R. Rajasingam for the appellant.

Haidar bin Mohamed Noor (Deputy Public Prosecutor) for the respondent.

Sharma J. (delivering oral judgment): This is an appeal against sentence. The accused having pleaded guilty to the two charges against him under sections 9(1)(b) and 10(2)(a) of the Dangerous Drugs Ordinance 1952 could not, because of the provisions of section 305 of the Criminal Procedure Code, appeal against his conviction. He has, however, asked the court to exercise its revisionary powers, if necessary, and I see no reason why I should not act under section 325(i) of the Criminal Procedure Code.

The charges were read over and according to the record they were explained to and understood by the accused and he pleaded guilty thereto. He admitted the facts but in mitigation stated that the exhibits were not his and that they had been left behind by a friend of his. Proof of "possession" was the very essential ingredient of those offences and in spite of what the accused said the learned president found him guilty and convicted him on the two charges. A plea of guilty may be accepted by the court and the accused convicted on it but the court is not bound to accept a plea of guilty in all cases. The court must carefully consider whether the accused has fully understood the nature of the charge to which he pleads guilty. The accused is not to be taken at his word when he pleads guilty unless the plea is expressed in unmistakeable terms with full appreciation of the essential ingredients of the offence. This rule of law is applied with all the greater stringency when the offence charged is complicated or serious.

In the instant case, the question of possession was involved which can sometimes be a very difficult question. In taking down a plea of guilty the use of the set formula:

"Charge read over and explained to the accused and understood by him. Pleads guilty. Understands the nature and consequences of his plea. Plea accepted."

should not be the result of sheer wont and habit as if it was an empty and meaningless ritual which the pen irresistibly begins to perform and complete once the magic words "I plead guilty" are uttered by the accused. The taking down of a plea of guilty is a solemn and serious act and the magistrates should devote some time and active thought before they decide to accept that plea and base a conviction thereon.

In the case of *Christopher Ingleson*[1] the accused was convicted of horse stealing on his plea of guilty. He handed up a statement which stated that he did not know that the horses were stolen. Lord Coleridge J. in his judgment said:

"He pleaded guilty and handed up a statement to the recorder which, if believed, was a complete exculpation: it ended with the words, 'I am guilty of taking the horses not knowing that they were stolen.' If the recorder read that it was clearly his duty to explain to the prisoner that his proper course was to plead not guilty, and to have such a plea entered. We presume the recorder did not read to the end of the statement. It is most important that a prisoner should not be caught by a phrase like 'guilty'; clearly he meant that he had had no felonious intent."

Again in the case of *Alfred Golathan*,[2] Reading L.C.J. said:

"It appears to be quite plain from reading the shorthand note that at the most he admitted entering the premises, but added that he did not do so for the purpose of stealing. That unfortunately was taken as a plea of guilty, and he was thereupon sentenced to a long term of penal servitude.... In our view this man's plea was not a plea of guilty at all, and no man is to be convicted on a plea which is ambiguous. If there is any ambiguity it is to be taken as a plea of not guilty, and evidence given against him in the ordinary course. He must not be taken to have admitted his guilt unless he does so in unmistakeable terms."

In Malacca Criminal Revision No. 4 of 1970, I had occasion to say:

"I like to add that when an accused person pleads guilty it is the duty of the learned magistrate to carefully consider whether the accused fully understands the nature of the charge to which he pleads guilty. A plea of guilty, as has been said, must be received with caution and generally the court should satisfy itself by putting questions to the accused in order to see whether he is aware of the facts on which the charge is founded against him and also whether he admits his guilt voluntarily without any extraneous pressure or expectation of a lesser sentence. An accused does not plead to a section of a criminal statute. He pleads guilty or not guilty to the facts alleged in the charge which in law are said to disclose an offence under the section named in the charge.... It is the duty of the appellate court to see that the accused had not pleaded guilty on a misconception of law or that his conviction was not founded on such evidence which did not or could not constitute the offence under the charge."

A plea of guilty only amounts to an admission that the accused committed the acts alleged against him and not an admission of the guilt under a particular section of the Act. If he pleads guilty under an erroneous view of the law his conviction cannot stand. In such a case the plea of guilty does not avail because he cannot be said to have committed the offence in question in the eyes of the law.

This appeal is allowed and the case sent back for retrial before another president.

Appeal allowed

Solicitors: *R. Rajasingam & Co.*